

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kathryn Duffy	Team: Team # 1	CCRB Case #: 200804389	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 02/29/2008 4:13 AM	Location of Incident: East 138th Street and Grand Concourse	Precinct: 40	18 Mo. SOL 8/29/2009	EO SOL 8/29/2009	
Date/Time CV Reported Thu, 03/27/2008 10:48 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 03/27/2008 10:48 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Christoph Crain	03856	933719	040 PCT
2. POM Vladimir Garcia	25020	941021	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Christoph Crain	Abuse: At the intersection of 138th Street and Grand Concourse in the Bronx, PO Christopher Crain stopped the car in which § 87(2)(b) was an occupant.	
B.POM Vladimir Garcia	Abuse: At the intersection of 138th Street and Grand Concourse in the Bronx, PO Vladimir Garcia frisked § 87(2)(b)	
C.POM Christoph Crain	Abuse: At the intersection of 138th Street and Grand Concourse in the Bronx, PO Christopher Crain threatened to arrest § 87(2)(b)	
D.POM Christoph Crain	Abuse: At the intersection of 138th Street and Grand Concourse in the Bronx, PO Christopher Crain searched the car in which § 87(2)(b) was an occupant.	
E.POM Christoph Crain	Force: En route to the 45th Precinct stationhouse, PO Christopher Crain used a chokehold against § 87(2)(b)	
F.POM Vladimir Garcia	Force: En route to the 45th Precinct stationhouse, PO Vladimir Garcia used physical force against § 87(2)(b)	
G.POM Christoph Crain	Force: En route to the 45th Precinct stationhouse, PO Christopher Crain used physical force against § 87(2)(b)	

## Synopsis

On March 27, 2008, § 87(2)(b) a resident of § 87(2)(b) in the Bronx, made the following complaint of police misconduct on the CCRB intake line.

On February 29, 2008, § 87(2)(b) patronized the Sin City strip club, located at 2520 Park Avenue in the Bronx, with his common-law wife, § 87(2)(b). During the night, he consumed several glasses of Hennessy cognac and smoked marijuana an undetermined number of times. At about 4:00 am, § 87(2)(b) and § 87(2)(b) left the club and walked to their Dodge Durango, which was parked on a nearby street. § 87(2)(b) drove and § 87(2)(b) sat in the front passenger seat. They drove to the intersection of 141<sup>st</sup> Street and St. Ann's Avenue when the car was stopped by a vehicle occupied by Sgt. John Costin, PO Christopher Crain and PO Vladimir Garcia, all assigned to the 40<sup>th</sup> Precinct (**allegation A**). PO Crain asked § 87(2)(b) and § 87(2)(b) to exit their vehicle, and they did so. § 87(2)(b) verbally protested, and alleged that an officer frisked her (**allegation B**). At some point, PO Crain told her to be quiet, or she would be handcuffed (**allegation C**). She was then dismissed without any further police interaction, while PO Crain frisked and searched § 87(2)(b). PO Crain found marijuana in § 87(2)(b)'s pocket in the course of the search. He was arrested for § 87(2)(b). PO Crain searched § 87(2)(b) and then searched his vehicle (**allegation D**). The vehicle was vouchered and impounded; officers did not release it to § 87(2)(b).

After his arrest, § 87(2)(b) was placed into the back of a marked police vehicle and transported to the 45<sup>th</sup> Precinct stationhouse to undergo chemical testing. PO Crain drove, Sgt. Costin sat in the front passenger seat, and PO Garcia sat in the back seat with § 87(2)(b). § 87(2)(b) alleged that PO Crain was also sitting in the back seat and placed him in a chokehold (**allegation E**) and punched him in the face multiple times (**allegation F**). As this went on, PO Garcia also punched him in the face (**allegation G**). § 87(2)(b) alleged that the punching and the chokehold did not cause significant pain, but left bruises around both of his eyes and caused his lip to bleed. At the 45<sup>th</sup> Precinct, he refused the chemical test, and he was then taken to the 40<sup>th</sup> Precinct stationhouse and Bronx Central Booking for arrest processing.

§ 87(2)(g)

### Summary of Complaint

§ 87(2)(b)

§ 87(2)(b) was interviewed at the CCRB on April 4, 2008. He is a § 87(2)(b)-year-old black male who is 5'9" tall and weighs 200 lbs. § 87(2)(b)

On the night of February 28, 2008, § 87(2)(b) and his common-law wife, § 87(2)(b) went to the Sin City strip club located at 2520 Park Avenue in the Bronx near the Major Deegan Expressway. § 87(2)(b) was dressed in casual clothing with a brown and green leather jacket in which he had a small amount of marijuana (he could not specify how much but stated that it was “less than a dime bag” when asked) in the right hand pocket. They stayed until approximately 4:00 am on February 29, 2008. At the club, § 87(2)(b) consumed at least two shots of Hennessey and smoked marijuana at intervals throughout the night. He said that he did not consider himself intoxicated. § 87(2)(b) had one cocktail, composed of a mix of Malibu rum and pineapple juice, but § 87(2)(b) did not say whether § 87(2)(b) also smoked marijuana. At 4:00 am, the two left Sin City and walked to § 87(2)(b)'s vehicle, a 2004 Dodge Durango sport utility vehicle parked about a block away. He was not sure of the street name, but said that it runs parallel to the Major Deegan Expressway and was linked to the Grand Concourse by East 138<sup>th</sup> Street. Upon further questioning, § 87(2)(b) was uncertain of any of the street names in the vicinity, and his arrest paperwork indicated that he was stopped at 138<sup>th</sup> Street at the intersection with Grand Concourse. § 87(2)(b) was driving and § 87(2)(b) sat in the front passenger seat.

The Durango, which was parked on the street at the curb, was boxed in by several double-parked vehicles, so § 87(2)(b) honked the horn. He did not know how many vehicles there were, or their makes or models. He was not sure how long he and § 87(2)(b) waited before being allowed to pull the car out of the parking spot, but the other vehicles eventually pulled away. He then pulled into the street and drove about fifty feet down the block to the intersection with East 138<sup>th</sup> Street, where he stopped for a red light before making a left turn. At the red light, § 87(2)(b) noticed that there were police cars in the vicinity, and noted that there are often multiple units present when the bars in the vicinity close for the night. He waited for the light to change and then made a left.

After making the left turn, § 87(2)(b) was immediately pulled over by a marked police vehicle. He was unclear on this point and stated that several police vehicles were present, including at least one marked and one unmarked car, but he could not describe the unmarked vehicle or say which had pulled him over. He explained that there were many police vehicles in the vicinity because the strip club was closing. There were several officers present when his vehicle was stopped, both in uniform and in plain clothes, and he did not know which car was occupied by which officers. Two male officers dressed in uniform approached his vehicle. He identified the officer to approach on the driver's side of the vehicle as PO Christopher Crain of the 40<sup>th</sup> Precinct<sup>1</sup>. The second officer, identified by the investigation as PO Vladimir Garcia, also from the 40<sup>th</sup> Precinct, approached on the front passenger side of the vehicle. As the officers approached, § 87(2)(b) opened his window, and PO Crain began to question him.

§ 87(2)(b) had difficulty recounting the sum and substance of the conversation with PO Crain. He first said that PO Crain asked him why he was honking at the light. He stated at another point that PO Crain did not ask him any questions. He later said that PO Crain first asked him why he had honked at the other vehicles before leaving his parking spot, but he could not remember whether he answered him or what the answer was. He said that PO Crain never asked him for his driver's license, registration, or to turn off the car. PO Crain and PO Garcia instructed § 87(2)(b) and § 87(2)(b) to exit the vehicle, and they both complied with his request.

§ 87(2)(b) said that he was immediately handcuffed when he stepped out of the vehicle, but § 87(2)(b) was not. PO Crain searched his person as PO Garcia frisked § 87(2)(b). § 87(2)(b) said that he didn't pay attention to § 87(2)(b) so he did not know what her interaction with PO Garcia consisted of. As he was being searched, officers searched his vehicle, including the front and back seats and back cargo area. An officer opened the back hatch of the vehicle to look in the cargo area, which is also accessible through the back seat. He said that he could not see the exact areas that the officers searched, such as the glove compartment or center console, because he had been led to stand near a marked police vehicle parked

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<sup>1</sup> § 87(2)(b) did not see PO Crain fill out any paperwork but knew that he was the arresting officer. He described PO Crain as a white male officer dressed in uniform. He was approximately 5'6" and weighed between 160 and 170 lbs. He did not know PO Crain's hair color. He stated that he saw PO Crain's name from his nameplate.

nearby, and it was dark. However, he attributed the search to PO Crain (who he also said was searching his pockets and guarding him at the same time as the vehicle search was conducted) and said that he went “all through the car.” He also stated that there were “plenty” of officers, but he attributed both the search of the vehicle and the search of his person to PO Crain, who discovered the marijuana in his right jacket pocket and said, “Oh, what’s this?”

§ 87(2)(b) loudly verbally protested the officers’ actions, including the search of § 87(2)(b) and the search of the vehicle. § 87(2)(b) said that § 87(2)(b) repeatedly asked why they had been stopped, but no officers answered her, and instead told her to shut up. § 87(2)(b)’s voice was not raised at first, but she became more excited as the incident went on. Finally, PO Crain advised § 87(2)(b) “If you don’t shut up, the cuffs will be on you,” and she walked away toward the Grand Concourse. § 87(2)(b) said that he also told her to go, because he feared she would be arrested because she was being loud and disrespectful. The officers present did not allow her to take § 87(2)(b)’s vehicle home, and he later learned that she called a cab.

§ 87(2)(b) was led to the back of one of the police vehicles on the scene. He did not recall whether it was a marked or unmarked vehicle, but he was sure (from his recollection of the interior) that it was a Chevy Impala. The car was equipped with a divider between the front and back seats. Two officers whom he could not describe, and with whom he did not interact, were driving the vehicle and sitting in the front seat. PO Crain and PO Garcia rode in the back of the vehicle, seated on either side of § 87(2)(b).

§ 87(2)(b) said that conditions in the back seat were “tight,” and he didn’t have enough room because he was in the center and was still handcuffed. PO Crain sat to his right and PO Garcia sat to his left. PO Crain told him to move over and make some room (by turns, he said that the officers told him to “move [his] leg” and “that [he] was taking up too much space”). § 87(2)(b) refused, and told PO Crain, “I need the space that I take.” The car began to move, and PO Crain turned toward § 87(2)(b) and wrapped his hands around § 87(2)(b)’s neck, “like he was trying to choke [him].” However, § 87(2)(b) reported no trouble breathing, and when asked whether he could speak or breathe, he amended his statement to say, “He wasn’t... He was choking lightly.” § 87(2)(b) responded to PO Crain by asking, “Is that all you’re gonna do, beat me up in handcuffs? Is that all you’ve got?”

When § 87(2)(b) said this to PO Crain, PO Garcia leaned in from the other side and punched him in the face with both fists. § 87(2)(b) was unable to account for how many times he was punched or estimate a timeframe for the punches. He stated that PO Garcia punched him “about twenty times” with closed fists. He later added that PO Crain punched him two times. He said that PO Crain used one hand around his neck in a chokehold and punched him with his other, free hand. He said that every punch from PO Crain and PO Garcia landed about his temples and face. The punches did not cause bleeding or swelling, and § 87(2)(b) said that they didn’t cause a substantial amount of pain. He stated at one point that there were three separate incidents of punching and chokeholds during the ride.

§ 87(2)(b) denied fighting back or defending himself against the physical force. He noted that he was handcuffed and stated multiple times that both PO Crain and PO Garcia were much smaller than he, and said that this proved that he had not fought back even though “I was in my rights to.” He brought up the topic of resisting or fighting the police without being asked by the interviewing investigator. He denied wiggling or struggling in the seat, and said that he stayed still throughout the chokeholds and punches.

§ 87(2)(b) was unable to describe each of the three incidents independently. He once attributed three separate chokeholds to PO Crain, and then said there were two. He later said that he could not remember how chokeholds were performed, and added that PO Crain choked him every time he spoke, “Like a shut up type of thing.” He changed his statement multiple times and was inconsistent about which officer punched him and when (he was, however, consistent in stating that only PO Crain choked him, while PO Garcia did the majority of the punching). He was adamant that the punches were not particularly painful, and added that he objected because PO Crain and PO Garcia’s behavior was “bullying” and “a violation.”

§ 87(2)(b) said that he sustained two black eyes and a cut lip because of the alleged force. He told the interviewing investigator multiple times that “I’m light skinned, so it doesn’t look good,” in reference to

the bruising about his eyes, but said that he did not realize that the punches caused any marks on his face until much later, when an unidentified officer asked him, "What happened to your face?" There were no marks or swelling to his neck after being choked, and no lasting injuries resulted from the alleged force. Although § 87(2)(b) could not say for how long or how many times he was punched, he estimated that each separate episode lasted for about a minute, and that the car ride lasted a total of ten minutes.

§ 87(2)(b) was taken to a stationhouse that he believed to be the 45<sup>th</sup> Precinct, where an officer attempted to administer a breathalyzer test, but he refused to take it. He said that he refused because he feared that the cut on his lip would be infected by the mouthpiece on the breathalyzer test. He was then transported to the 40<sup>th</sup> Precinct (he was not sure what the building was but said that it was located at the intersection of 138<sup>th</sup> Street and Alexander Avenue, which is where the 40<sup>th</sup> PCT stationhouse is located) and his arrest was processed. § 87(2)(b) thought that he was also taken to Central Booking, but could not say at what time he went or how he was transported there. He was brought before a judge at 4:00 pm on either February 29, 2008, or March 1, 2008. He was not sure which day it was but thought it was more likely to be Friday, February 29.

§ 87(2)(b) did not seek medical treatment for his injuries, and stated that he did not experience any pain to his face in the days following his arrest. He said that the only sign of injury was two black eyes, and stated that he would bring photographs of his injuries to the CCRB at a later date, but did not have photographic evidence with him at the time of the interview. He has not provided photographic documentation of any injury as of the date of this report.

§ 87(2)(b) was charged with § 87(2)(b). The marijuana was vouchered into evidence.

### **Arrest Photo**

§ 87(2)(b)'s photo, taken February 29, 2008, does not reflect any bruising or other marks about the eyes or throat, nor does it reflect any visible lacerations about the mouth. His appearance was consistent with what was observed by the undersigned investigator at § 87(2)(b)'s CCRB interview on April 4, 2008.

§ 87(2)(b)

§ 87(2)(b) § 87(2)(b)'s common-law wife § 87(2)(b) was present with § 87(2)(b) at Sin City and was in his car as it was initially stopped. She was not interviewed by the CCRB. § 87(2)(b) corroborated that an officer frisked her after the stop of § 87(2)(b)'s vehicle during a telephone conversation with the undersigned investigator on April 7, 2008. She did not repeat § 87(2)(b)'s allegations that PO Crain threatened to arrest her. During a telephone conversation on October 8, 2008, when asked to provide a sworn statement, § 87(2)(b) stated that she did not want her complaint to be investigated.

## **Results of Investigation**

### **Officer Statements**

#### ***PO Christopher Crain***

PO Christopher Crain is a § 87(2)(b) year old white male who stands 5'7" tall and weighs 165 lbs. He is a three-year veteran of the NYPD. On February 29, 2008, he was assigned to patrol Conditions within the confines of the 40<sup>th</sup> Precinct. He was the operator of an unmarked vehicle and worked with Sgt. Costin and PO Vladimir Garcia, both assigned to the 40<sup>th</sup> Precinct, from 11:15 pm until 7:50 am. He made a **memo book** entry regarding this incident that noted that a car was stopped at 138<sup>th</sup> Street and Grand Concourse and the driver was arrested for § 87(2)(b). The entry also notes that § 87(2)(b) refused the breathalyzer exam. The **arrest report** prepared by PO Crain indicates that § 87(2)(b) was stopped after PO Crain observed him making a turn without signaling. Subsequent to the stop, § 87(2)(b) was observed with watery eyes and slurred speech, and a bottle of Bacardi and an unknown quantity of

marijuana were uncovered in his vehicle and on his person, respectively. He was arrested and taken to the 45<sup>th</sup> Precinct for chemical testing, which he refused. **Property vouchers** § 87(2)(b) and § 87(2)(b) prepared by PO Crain on the date of the incident, indicate that he discovered both the Bacardi and the marijuana. PO Crain was interviewed by the undersigned investigator at the CCRB on May 13, 2008, and made the following statement.

At approximately 4:50 am on February 29, 2008, PO Crain noticed a car driven by § 87(2)(b) pull out of the lot of the Sin City strip club, located at 2520 Park Avenue in the Bronx, and proceed down the block at a speed between forty and fifty miles per hour. § 87(2)(b) repeatedly drove up to stoplights too quickly and then screeched to a halt directly behind other vehicles. PO Crain was not sure how many times this occurred, but thought that § 87(2)(b) exhibited this behavior before at least two streetlights. PO Crain, who was the operator of the police vehicle, pursued him. He stated that it was his independent decision to do so and that Sgt. Costin did not say anything about the pursuit and subsequent stop, which was performed under PO Crain's discretion. PO Crain activated the turret lights and pulled § 87(2)(b) over at the corner of St. Ann's Avenue and East 141<sup>st</sup> Street (although his memo book entry and arrest paperwork both indicate that the incident location was 138<sup>th</sup> Street and Grand Concourse).

When § 87(2)(b)'s vehicle stopped, PO Crain approached at the driver's side while Sgt. Costin and PO Garcia approached at the passenger side, where a slender female identified by the investigation as § 87(2)(b) was sitting. PO Crain noted that § 87(2)(b) smelled of alcohol, and had bloodshot eyes. PO Crain asked both § 87(2)(b) and § 87(2)(b) to exit the vehicle, because § 87(2)(b) appeared to be considerably intoxicated and had trouble answering questions.

When § 87(2)(b) exited the vehicle, it was apparent that he was extremely inebriated, as he had to grip the side of the vehicle to maintain an upright position, and PO Crain decided to arrest him. He was handcuffed and placed into the waiting Impala, and § 87(2)(b) was told to go. The vehicle was not released to her because she also smelled of alcohol. § 87(2)(b) was "combative" and verbally protested the vehicle stop by screaming at the officers that they had no right to stop her boyfriend. PO Crain said that she was wearing very tight clothing that made it evident that there were no weapons on her person. She was therefore not frisked. She became more combative when told that the vehicle, a Dodge Durango, would not be released to her, but eventually left the scene without further incident. When asked about the alleged search of the vehicle, PO Crain said he did not recall searching it personally, and thought that he had not performed the search. He was not sure if the search took place at the arrest location or at a police facility. However, he was confident that a search had, in fact, been performed. Property vouchers, noted above, indicate that PO Crain discovered both the marijuana on § 87(2)(b)'s person and the Bacardi bottle inside the vehicle.

§ 87(2)(b) was placed into the back of the Impala and was seated behind PO Crain, who was driving. PO Garcia sat beside him and Sgt. Costin sat in the front passenger seat. PO Crain said that § 87(2)(b) became belligerent while being transported. At one point, he punched the back of the driver's seat and yelled that he was "just trying to get comfortable." PO Crain acknowledged that he and the other officers probably told § 87(2)(b) to shut up several times, but denied that any physical force was used by PO Garcia or any other officer, including any restraint in the neck or chest area or any actions analogous with a punch. After § 87(2)(b)'s outburst, he was quiet and not combative.

#### ***PO Vladimir Garcia***

PO Garcia is a Hispanic male officer who is § 87(2)(b) years old, 5'5" tall and weighs 145 lbs. On February 29, 2008, he was dressed in uniform and working with Sgt. Costin and PO Crain in an unmarked black Chevy Impala. He was interviewed at the CCRB on May 27, 2008, and provided a statement consistent with that of PO Crain. He did not bring his memo book to the CCRB interview, and was told on the record that he must send the appropriate pages to the CCRB. He did not do so. The undersigned investigator called the 40<sup>th</sup> Precinct ICO on October 22, 2008, and asked for the appropriate entry to be faxed, but it was never received. § 87(2)(g)

§ 87(2)(g)

At about 4:00 am on February 29, 2008, PO Garcia rode in the back of a marked police vehicle driven by PO Christopher Crain, who observed § 87(2)(b) make a moving violation. PO Garcia did not make the observation. PO Crain pulled § 87(2)(b) over and approached him at the driver's side window on foot. PO Garcia approached just behind PO Crain, and Sgt. Costin approached at the passenger side window, where he interacted with a female passenger identified by the investigation as § 87(2)(b). PO Crain began to speak to § 87(2)(b) and the odor of alcohol became apparent. PO Crain instructed § 87(2)(b) to exit the vehicle and placed him under arrest for driving while impaired.

§ 87(2)(b) was dismissed and § 87(2)(b) was placed in the back of the Impala, behind PO Crain and beside PO Garcia, to be transported to the 45<sup>th</sup> Precinct stationhouse for chemical testing. PO Garcia said that § 87(2)(b) never protested or resisted, and that physical force was never used against him because it was not necessary. At one point, § 87(2)(b) kicked the back of PO Crain's seat, but PO Garcia said that the officers verbally instructed him to "settle down" and that he did so. He denied placing § 87(2)(b) in a chokehold or punching him. The interviewing investigator showed him the arrest photo of § 87(2)(b) (which reflects no apparent injuries) and he verified that this was his appearance at the time of the incident.

### **Medical Records**

§ 87(2)(b) did not seek medical treatment for his alleged injuries. He, PO Crain, and PO Garcia all denied that he requested medical treatment.

### **Police Documents**

The 40<sup>th</sup> Precinct roll call for the date of the incident confirms that PO Crain, PO Garcia, and Sgt. Costin patrolled together in the vicinity of the incident location. The 45<sup>th</sup> Precinct command log notes § 87(2)(b)'s arrest, that he refused the chemical test, and that PO Crain and PO Garcia later transported him to the 40<sup>th</sup> Precinct for further processing.

### **Civilian Criminal and CCRB Histories**

§ 87(2)(b) has never made another CCRB complaint. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Subject Officers' CCRB Histories**

PO Crain, a four-year veteran of the NYPD, and PO Garcia, a two-year veteran of the NYPD, have no history of substantiated allegations.

## **Conclusions and Recommendations**

### **Officer Identification and Pleading of Allegations**

§ 87(2)(b) identified PO Christopher Crain by name as his arresting officer, and attributed the vehicle stop, vehicle search, threat to arrest § 87(2)(b) and subsequent force allegations to him. Police documentation confirms that PO Crain was the arresting officer and searched the vehicle. § 87(2)(b) specifically stated that only PO Crain used a chokehold against him. PO Crain verified that he arrested and interacted with § 87(2)(b) on the date of the incident. Although he did not recall performing the search of § 87(2)(b)'s vehicle, it is not in dispute that the car was in fact searched, that the search was incident to § 87(2)(g) arrest, and that PO Crain's name appears on the arrest evidence vouchers. § 87(2)(g)

§ 87(2)(b) also alleged that a second officer frisked § 87(2)(b) and later sat in the back seat of the police vehicle and punched § 87(2)(b) in the face. He described the second officer as an Indian or Hispanic male officer dressed in uniform, who stood 5'6" tall and weighed 150 lbs. PO Crain's partner, PO Garcia, is 5'5" tall, and weighs 145 lbs. He stated in his CCRB interview that he sat in the back seat of an unmarked police vehicle with § 87(2)(b) while the officers transported him to the 45<sup>th</sup> Precinct stationhouse. As such, the additional allegation of physical force is pleaded against PO Garcia.

### Undisputed Facts

It is undisputed that § 87(2)(b) consumed several alcoholic beverages and smoked marijuana during the morning hours of February 29, 2008, and that he operated his vehicle after said consumption. It is undisputed that PO Christopher Crain and other officers stopped the vehicle occupied by § 87(2)(b) at some time on the morning of February 29, 2008, and arrested him immediately thereafter, but dismissed § 87(2)(b) his passenger. It is undisputed that § 87(2)(b) refused to undergo chemical testing at the 45<sup>th</sup> Precinct stationhouse.

### Disputed Facts

§ 87(2)(g) § 87(2)(g)  
(g)  
§ 87(2)(g)

### Assessment of Evidence

§ 87(2)(g) § 87(2)(g)  
§ 87(2)(g) He had admittedly smoked marijuana and consumed cognac through the hours leading up to his encounter with officers from the 40<sup>th</sup> Precinct, and had difficulty recalling details or giving a comprehensive account of the incident. Officers Crain and Garcia also stated that he smelled of alcohol, had bloodshot eyes, and was so unsteady that a field sobriety test was not necessary to determine his condition. An open container of Bacardi was recovered from the vehicle that § 87(2)(b) was operating, § 87(2)(g)

It is undisputed that § 87(2)(b)'s vehicle was stopped by a marked patrol car occupied by PO Christopher Crain, PO Vladimir Garcia, and Sgt. John Costin. PO Crain stated in his CCRB interview that he was the vehicle operator and made the independent decision to stop § 87(2)(b) because he was driving erratically. § 87(2)(g) It is further undisputed that at least PO Crain and PO Garcia approached § 87(2)(b)'s vehicle on foot, and smelled alcohol emanating from his person when he opened his window. The officers then instructed § 87(2)(b) and his wife, § 87(2)(b) to exit the vehicle. § 87(2)(b) was told to leave the area but was not allowed to take the vehicle.

§ 87(2)(b) alleged that, at or around this point in the incident, officers searched his vehicle. He attributed the search to PO Crain, but he also stated that PO Crain frisked and searched his person and discovered a small piece of marijuana. PO Garcia thought but was not sure whether anyone searched the vehicle, but did not know who performed the search. Similarly, PO Crain stated that the vehicle might have been searched at the scene of the incident, but was not sure who performed the search or when it was performed. He denied searching the vehicle himself. Evidence vouchers obtained from the 40<sup>th</sup> Precinct indicate that a search of the vehicle was in fact performed, but it is unclear when this occurred or who searched the vehicle. § 87(2)(g)

After PO Crain searched § 87(2)(b) he was placed into the back of a police vehicle for transport to the 45<sup>th</sup> Precinct, to undergo chemical testing. § 87(2)(b) stated that he was in the center back seat of a police vehicle, and PO Crain and PO Garcia were seated to either side of him. Two unidentified officers assigned to highway sat in the front driver and passenger seats of the car. PO Crain and PO Garcia, however, stated that they transported § 87(2)(b) in the same marked police vehicle in which they had



been patrolling. PO Crain operated the vehicle, Sgt. Costin sat beside him in the front passenger seat, PO Garcia sat in the back seat behind Sgt. Costin, and § 87(2)(b) who was handcuffed, sat directly behind the driver, PO Crain. § 87(2)(g)

§ 87(2)(b) also failed to notice Sgt. Costin when the officers originally approached the vehicle, and did not account for his presence when stating who sat where during the trip to the 45<sup>th</sup> Precinct. § 87(2)(g)

§ 87(2)(b) alleged that, after being seated in the car, there was not enough room for him, PO Crain, and PO Garcia in the back seat. He did not intentionally push or shove the officers, but stated, “I need the space that I take.” § 87(2)(g) PO Garcia and PO Crain both stated that, at one point, § 87(2)(b) shoved the back of PO Crain’s seat and claimed that there was not enough room for his legs. Both officers verbally instructed § 87(2)(b) to “settle down,” and he did so, and did not cause any further disturbance during the drive. § 87(2)(g)

§ 87(2)(b) went on to allege that, after he complained about the conditions in the back seat, PO Crain grabbed him with one hand around the throat and punched him in the face with his other hand, which was held in a closed fist. As noted in § 87(2)(b)’s CCRB statement, he could not specify exactly how many times PO Crain hit him, but estimated that he was punched about twenty times about the eyes and cheeks. PO Garcia joined in the punching, but did not choke him. He could not specify exactly how many blows each officer took. The punches allegedly caused bruising around both of § 87(2)(b)’s eyes and caused a cut to his lip, but he claimed that he was not in significant pain, and experienced no swelling to the affected areas. He stated that he was able to breathe and speak during the alleged chokehold because PO Crain was “choking lightly.” He offered to provide photographs of his injuries taken soon after the incident, but he never did so. His arrest photograph reflects no visible injuries, swelling, bruising, or lacerations. He did not seek any medical treatment, either through the NYPD or after his release. PO Crain and PO Garcia both denied that anything of this nature occurred in their statements at the CCRB.

§ 87(2)(g)

**Allegation A: At the intersection of 138<sup>th</sup> Street and Grand Concourse in the Bronx, PO Christopher Crain stopped the car in which § 87(2)(b) was an occupant.**

§ 87(2)(b) stated that, when he left Sin City strip club, he first honked his horn loudly, and then drove to a streetlight on the next block. He was stopped almost immediately after. PO Crain stated that § 87(2)(b) was driving erratically, speeding and pulling up to stoplights at an unsafe speed before screeching to a halt. PO Crain decided to stop the vehicle, and when he interacted with § 87(2)(b) it was revealed that he smelled strongly of alcohol, had bloodshot eyes, and could not coherently answer questions posed to him. When PO Crain asked him to step out of the vehicle, § 87(2)(b) could not stand without gripping the car door. § 87(2)(b) admitted to having consumed quantities of alcohol and marijuana in the hours leading up to the stop.

In Barry Kamins’ *New York Search and Seizure*, it is noted that an officer must be able to “articulate one or more specific traffic infractions” to support his assessment that an individual is driving erratically. PO Crain stated that he saw § 87(2)(b) driving at a rate of forty to fifty miles an hour in a posted thirty-mile-per hour zone. § 87(2)(g)

§ 87(2)(g)

**Allegation B: At the intersection of 138<sup>th</sup> Street and Grand Concourse in the Bronx, PO Vladimir Garcia frisked § 87(2)(b)**

**Allegation C: At the intersection of 138<sup>th</sup> Street and Grand Concourse in the Bronx, PO Christopher Crain threatened to arrest § 87(2)(b)**

During his in-person interview at the CCRB, § 87(2)(b) was not sure of the substance of § 87(2)(b)'s interaction with PO Crain and PO Garcia, but thought that PO Garcia frisked her. However, § 87(2)(b) confirmed in a telephone conversation with the undersigned investigator that she was frisked at the scene of § 87(2)(b)'s arrest. § 87(2)(b) also alleged that PO Crain told § 87(2)(b) to be quiet, "Or the cuffs will be on [her]." During a telephone conversation on October 9, 2008, § 87(2)(b) stated that she no longer wanted any form of investigation and wished to withdraw her complaint. The undersigned investigator mailed a withdrawal letter to her address on the same day, but she has not returned it as of the date of this report. § 87(2)(g)

**Allegation D: At the intersection of East 138<sup>th</sup> Street and Grand Concourse in the Bronx, PO Christopher Crain searched the car in which § 87(2)(b) was an occupant.**

PO Christopher Crain did not recall searching § 87(2)(b)'s vehicle, but acknowledged that a search occurred. He could not identify who performed the search. § 87(2)(b) specified that he saw PO Crain going through the contents of his vehicle. § 87(2)(g)

Neither PO Crain nor PO Garcia denied that a search occurred, but they were unable to identify the officers who performed the search. § 87(2)(g)

According to Barry Kamins' *New York Search and Seizure*, it is permissible for an officer to search the grabbable area of a vehicle incident to a lawful arrest, particularly if the vehicle itself was used in the commission of a crime. § 87(2)(g)

**Allegation E: En route to the 45<sup>th</sup> Precinct stationhouse, PO Christopher Crain used a chokehold against § 87(2)(b)**

**Allegation F: En route to the 45<sup>th</sup> Precinct stationhouse, PO Vladimir Garcia used physical force against § 87(2)(b)**

**Allegation G: En route to the 45<sup>th</sup> Precinct stationhouse, PO Christopher Crain used physical force against § 87(2)(b)**

§ 87(2)(g)

He stated when asked whether he could breathe or speak during the chokehold that "[PO Crain] was choking lightly." There were no photos of the alleged bruising to his face

and cut to his lip, and the arrest photo, taken shortly after the alleged force would have occurred, reflected no evidence of injury. PO Crain and PO Garcia § 87(2)(g) both denied that any force was used. § 87(2)(g)

Investigator:  
Kathryn Duffy  
Supervisor:

Date: October 28, 2008  
Date:

Reviewed by:

Date:

Reviewed by:

Date: